IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

OP.No. 28871 of 2002(K)

PETITIONER:

M/S. CERAMIC ENGINEERING ENTERPRISES,
18, RATNA VILAS BUILDING, RAILWAY STATION ROAD,
P.O. BOX NO.15, TRICHUR-680 001,
REPRESENTED BY ITS PARTNER, FRANCIS ALUKKA.

BY ADV. SRI.A.V.XAVIER

RESPONDENTS:
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1. COMMISSIONER FOR COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

2. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO
COMMERCIAL TAXES, THIRUVANANTHAPURAM.

BY ADV. SHRI.C.K.GOVINDAN, GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 23/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP NO. 28871/2002

ORDER ON CMP NO. 49113/2002 IN OP NO. 28871/2002 &

ORDER ON CMP NO. 7530/2003 IN CMP NO. 49113/2002 IN OP NO. 28871/2002

DISMISSED.

23/11/2007 SD/- (C.N.RAMACHANDRAN NAIR, JUDGE)

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE ASSESSMENT ORDER DATED 18/11/88.

P2 : COPY OF THE ORDER IN SALES TAX APPEAL NO.STA.I.603, 604 & 605/89 DATED 03/07/90.

P3 : COPY OF THE RE-ASSESSMENT ORDER DATED 10/10/95.

P4 : COPY OF THE NOTICE DATED 18/08/95 UNDER SEC.10A OF THE CST ACT.

P5 : COPY OF THE OBJECTION DATED 15/09/95 FILED BY THE PETIITONER.

P6 : COPY OF THE ORDER DATED 10/10/95 PASSED BY THE SALES TAX OFFICER.

P7 : COPY OF THE ORDER IN REVISION PETITION DATED 14/06/96.

P8 : COPY OF THE ORDER DATED 18/05/99 PASSED by the COMMISSIONER OF COMMERCIAL TAXES.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

O.P. No. 28871 of 2002

Dated, this the 23rd day of November, 2007

J U D G M E N T

Petitioner is challenging Ext.P8 order whereunder the Commissioner has confirmed penalty levied under Section 10 A of the CST Act for violation of Section 8(3)(b) of the CST Act, in as much as petitioner purchased goods for use for purposes not authorised under the CST Act. Concessional rate can be claimed by issuing C-form, only if the item purchased is included in the Certificate of Registration of the dealer, as items for manufacture or for resale or for use in generation of power. The items purchased were for use in works contract and not for sale. The purchase is made during the year 1982-83, when tax was not payable on turn over on works contract. In the circumstances, petitioner's contention that the items purchased were for resale cannot be accepted. In any case, since items were not covered by Certificate of Registration, which is a mandatory condition for issue of C-form, levying of penalty sustained in revision is perfectly in order. Even though petitioner claims limitation against penalty proceedings, I do not find any limitation in the statute. In the circumstances, Ext.P8 is upheld. Since penalty is reduced in revision, there is no scope for

further reduction by this Court. However, since there was stay granted by this Court interest payable for delay in payment of penalty is cancelled, provided, petitioner makes payment of balance penalty within two weeks from receipt of this judgment. If payment is not made as above, recovery proceedings can be initiated for recovery of arrears with interest.

This original petition is disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE)

jg